

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT H. NESBITT, JR.,

Plaintiff,

No. CIV S-03-2243 MCE DAD P

vs.

NEIL WAKABAYASHI, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se with this action. Discovery and pretrial motion practice are closed. Pretrial conference and jury trial have been re-set. Plaintiff's amended pretrial statement is now due on March 3, 2006. Before the court is plaintiff's emergency request for appointment of counsel.

The United States Supreme Court has ruled that district courts lack authority to require counsel to represent indigent prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In certain exceptional circumstances, the court may request the voluntary assistance of counsel pursuant to 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court does not find the required exceptional circumstances. Plaintiff's request for appointment of counsel will therefore be denied.

1 Accordingly, IT IS HEREBY ORDERED that plaintiff's November 21, 2005
2 emergency request for appointment of counsel is denied.

3 DATED: November 29, 2005.

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6 DALE A. DROZD
7 UNITED STATES MAGISTRATE JUDGE

6 DAD:13:bb
7 nesb2243.31